

(2004) 06 RAJ CK 0010

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1676 of 2004

Mukesh Garg (Dr.) and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-06-2004

Acts Referred:

Indian Medical Council Act, 1956 — Section 11, 15, 20
Postgraduate Medical Education Regulations, 2000 — Section 20, 33(J)
Rajasthan University Act, 1946 — Section 29, 30, 31

Citation : (2004) 3 RLW 1718 : (2004) 3 WLC 639

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Advocate : P.S. Asopa, Manish Bhandari and Manish Acharya, for the Appellant;
Mohd. Rafiq, AAG, B.L. Sharma, Ajay Rastogi, R.A. Katta, S.N. Kumawat and
Ashok Gaur, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Rathore, J.—Since in all these writ petitions similar question of law is involved, these writ petitions are decided by this common judgment.

2. The petitioners who are selected through RPSC and substantially appointed as Medical Officer/Civil Assistant Surgeon, have filed these present writ petitions seeking writ order or direction that the circular/instruction so issued by the University of Rajasthan for Pre-P.G. Medical Examination 2004 for admission to MD/MS/Diploma Courses by which adhoc/temporary/contract employees have been permitted to appear in the said Examination in the category of "in-service", be declared illegal. All those candidates who are working on adhoc/temporary/consolidated salary should not be treated as "inservice" candidates and their merit should be determined along with general candidates.

3. Beside the aforesaid prayer the petitioner also challenged the provisions of validity of Rule 9 of the Rajasthan Medical and Health Services Rules of 1963 (for short, the Rules of 1963) and the reservation given to the OBC candidates.

4. This court vide order dated 31.3.2004 issued show cause notice to the respondents as to why this writ petition be not admitted and disposed of at the admission stage and in the stay petition, respondents were restrained to hold counselling for pre P.G. Course.

5. The aforesaid matter was listed on the application under Article 226 of the Constitution of India. After hearing arguments on the aforesaid application, the court allowed the doctors who are working as temporary/consolidated/adhoc to appear for counselling which was scheduled to be held on 16/17th May provisionally subject to the decision of the writ petition and shall not create any equity in their favour and the result of the counselling can only be declared after seeking prior permission of this court.

6. On 24th May, 2004, learned Additional Advocate General Mr. Mohd. Rafiq submitted that this court has permitted for counselling the doctors who were working on adhoc, temporary and contract basis, but until and unless they are allowed to join in the respective specialities, they cannot be considered for re-shuffling.

7. It was also given out that Hon''ble the Supreme Court in case of Medical Council of India Vs. Madhu Singh and Others, has directed the MCI to fix the time schedule of PG Medicine & Superspeciality courses and as per time schedule of admission fixed by the Supreme Court, the last date of admission to PG course has been fixed as 31st May, 2004 and prior to this, they have to undertake the reshuffling also.

8. As informed by the Additional Advocate General re-shuffling was to be held on 26.5.2004. In view of the submissions made by the Additional Advocate General, this court modified the order dated 12.5.2004 and directed the respondents to consider the aforesaid categories provisionally in their respective superspeciality course for reshuffling subject to the decision of the writ petition and it will not create any equity in their favour.

9. Learned Advocates appearing on behalf of the petitioners submitted that the petitioners are holding M.B.B.S. degree and are presently in the service of the Government as they were duly selected by the RPSC and appointed as medical officer.

10. The petitioners have already undertaken the required rural service and thus they are fully eligible for appearing in the Pre P.G. Medical Examination in the category of "in-service" candidates. Out of total seats meant for P.G. course, 25% of the total seats are filled on All India basis competition which is called as "All India Competitive Entrance Examination" and 50% seats are filled from amongst the "in-service" candidates of Rajasthan Medical and Health State Service in various specialities and out of which 8% are reserved for Scheduled Caste and 6% for Scheduled Tribes candidates.

11. Learned counsel for the petitioners further submitted that while issuing

instructions of the year 2004 the Government has taken a contrary view then what was existing till 2003. By way of aforesaid instructions, the government has considered even those candidates to be "in-service" candidates, who are working on consolidated/contract basis not in consonance to the Rules of 1963 inasmuch as in these rules only the mode of appointment is either recruitment through Rajasthan Public Service Commission or in certain cases, urgent temporary appointments can be made for maximum period of one year and continuance beyond one year can be with the concurrence of the Rajasthan Public Service Commission.

12. The persons who were given appointment on the contract basis they are being paid consolidated salary at the rate of Rs. 8000/- per month and such appointment cannot be said to be dehors with the rules. Therefore, such persons cannot be treated under the category of in-service candidates.

13. Learned counsel for the petitioners referred provisions under the Ordinance of University of Rajasthan to emphasise that as per the Ordinance, one is required to have continuance 5 years service and such candidate must belong to State Medical and Health Service and he should be a in-service candidate.

14. They further referred a Rule 2(f), 2(i), 6 as well as part IV and V of the Rules of 1963. By way of referring definition clause of the Rules, "Members of Service" are those who are appointed against a substantive post either by way of promotion or by direct recruitment as per the method provided in part IV and V. In as much as urgent temporary appointments are also provided under part VI and not under Part IV and V. Hence, adhoc/temporary/consolidated salaried contractual employees cannot be treated as members of service. Thus, the government cannot extend the benefit of in-service category to any Doctors working dehors the rules.

15. By referring the provisions of Rajasthan University Act on behalf of the petitioners, it was submitted that the Rajasthan University Act was enacted by the state government as the power was vested with the state government u/s 4 of the university Act which gives power to the state to make provisions for affiliated college for undertaking admission in the Specialities of Medical, Engineering etc. Sub-section (2) of Section 4 of the University act gives power to the University to hold examination and to confer degrees and other academic distinction thereupon.

16. As per the provisions of Section 4, statutory powers pertaining to the subject is with the University of Rajasthan and therefore only all the Medical colleges in the State of Rajasthan are affiliated only with the University of Rajasthan and not with other universities and degree of P.G. Course is also conferred by the Rajasthan University.

17. With regard to administrative instruction for inclusion of adhoc/temporary/consolidated salaried contractual employees in the category of "in-service", it was submitted that in case of conflict between the administrative instructions

and statutory provisions, statutory provisions will prevail and government can issue administrative instructions only on the issues not covered or occupied by the statutory provisions, i.e. the government can issue administrative instructions to supplement the statutory provisions and not to supplant the same otherwise the statutory provisions made by the government remains meaningless and in the present matter, instructions of the government (if any) are contrary to the statutory provisions and thus cannot exist so as to include a candidate having not worked for 5 years and otherwise not a Member of the Service.

18. Learned counsel for the petitioners further submitted that if adhoc, temporary and consolidated salaried contractual employees are included in the category of "in-service", then the effect of selection through RPSC is taken away, more so, when many of the adhoc/temporary/consolidated salaried contractual employees had appeared in the selection conducted by the RPSC but failed therein and now if those RPSC unselected candidates are kept at par with the RPSC selected candidates, then there will be a clear violation of Articles 14 and 16 of the Constitution of India by treating unequals as equals.

19. Learned counsel for the petitioners in respect of their submissions placed reliance on the decision *Dr. Anil Nayyar and Others Vs. The University of Rajasthan and Others*, and more particularly they referred para 6 of the aforesaid judgment.

20. They also referred prospectus/instructions so issued by the respondents wherein item No. 1 provide different reservations and out of which, after leaving 25% seats for open competition, remaining seats are divided in equal ratio between "In-service" and open market which is termed as "general seats". So far as the reservation of SC/ST candidates is concerned, it is provided to the extent of 8% and 6% respectively in each category. But no reservation for O.B.C. candidates either under the Medical Council of India guidelines or even in the prospectus but to utter surprise of the petitioner, the result of the OBC candidates has been declared separately, though it is necessary to add that only benefit extended to the OBC is in regard to the minimum passing marks which are 40% but the said category has no further benefit of reservation as exist for SC/ST candidates, apart from 3% reservation for physically handicapped category.

21. Learned counsel for the petitioners further gave much emphasis on the eligibility criteria as laid down by the University for in-service category and submitted that without amending the Ordinance 278-E and 278-G, the Corrigendum was issued by the state government just before the Examination after the notification making the adhoc temporary employee eligible for the said category. Similarly, corrigendum was also issued in the year 2003 but the ordinance was not amended till date.

22. This year also without amending the ordinance issued the instruction for pre-

PG Medical Examination 2004 in the eligibility Clause-2 (iii), edition was made that the doctors working on adhoc temporary or on consolidated salary are eligible for in-service category.

23. The aforesaid condition was made as if the Ordinance has been amended by the university but the fact is that the said Ordinance has not been amended so far and the state government has directly encroached upon the field of the University to decide the eligibility. Therefore, action of the state is wholly without jurisdiction.

24. It is further submitted that the Ordinance 278-E and 279-G can only be amended by the respondents on the recommendations of the Academic Council as prescribed in Section 22-a and 23-A of the University of Rajasthan Act, 1946, but no procedure has been followed by the respondent state so far in this regard.

25. In support of their submissions they placed reliance on the judgment 1999 SC 3558 para 12 (3), and Haresh Dayaram Thakur Vs. State of Maharashtra and Others,

26. In support of the submissions that there is clear violation of Article 14 as unequals are treated as treated as equals placed reliance on the judgment 1971 SC 1801 para 4 and 7 (5).

27. In support of the submission that adhoc cannot be treated at par with the regular selected candidate through RPSC referred a provisions of Rule 112 and the persons who were given appointment on contract basis has no lien in service and thus they cannot be treated as equal to the duly selected candidates and placed reliance on the judgment 1993(2) RLR 147, RLW 1993(2) Raj. 601 (6), RLW 1994(2) 491 and 1995 (1) WLC 90 (7).

28. All the counsel who were appearing on behalf of the petitioners submitted that merely because they appeared in the PG Entrance Test, they have estopped to challenge the action of the respondents to file the present writ petition and objection raised by the respondents is vague and frivolous. In support of submissions placed reliance on the judgment Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, and 29 (8), and as the Supreme Court has held that no principle of estoppel applies against fundamental right.

29. The petitioners further drawn my attention towards the application form by which undertaking is supposed to be given by the candidates who are appearing in the category of in-service. More particularly Clause 3 which reads as under:-

"that I am working as Ad hoc CAS and I will submit my resignation to my appointing authority and proof thereof to the Principal of the respective Medical College before the date of joining. Acceptance of resignation from the appointing authority shall be submitted in due course of time".

30. Learned counsel for the petitioners referred the instructions for the Pre-P.G. Medical Examination-2004 for admission to MD/MS/diploma Courses. He gave

much emphasis on Clause 2 (ii) which reads as under:-

"For in service candidates as referred at Clause I(b) the candidates should be duly selected by RPSC under Rajasthan Medical & Health Services Rules, 1963 and should be below the age 45 years and should have completed at least 3 years of service in rural areas of the State of Rajasthan or 2 years of continuous service of Rural areas of Desert/Hilly or Tribal parts of the State. Rural area is defined as a rural area where Rural allowance is admissible to the doctors who should have actually served in the rural area. Application forms for Pre-P.G. Medical Examination received without certificate of Rural Experience and/or without the signatures of Director of Medical and Health Services shall not be entertained. No application of "in- service" candidates shall be accepted by the university, if sent directly. The candidates who have worked in rural areas continuously for three years in ad hoc/temporary capacity or on consolidated salary will also be eligible for in service category."

31. Learned counsel for the petitioners referred the Financial Commissioner & Principal Secretary to Government, Haryana, Health Department policy regarding higher studies for doctors in the Department of health and Medical Education and vide order dated 26.4.2002 criteria for in service candidate is laid down in Clause C (i) which reads as under:-

"He/she must have completed the probation period successfully and completed 5 years service under the State Government including the probation period out of which three years service should be in rural area/service.

32. Learned counsel for the petitioners submitted that as per Rule 112 of the RSR in-service candidates are eligible to proceed for study leave and the payment of the salary will be made in accordance with the provisions of Rule 97(2) whereas the doctors who were working on contract basis they have to submit their resignation and they are not permitted to proceed on study leave and also not eligible to get the salary as per the provisions of Rule 97(2). Thus, the persons who are working on contract basis cannot be treated in the category of in service.

33. Learned counsel appearing on behalf of the respondents raised preliminary objections regarding maintainability of the present writ petition as the petitioners appeared in Pre P.G. Medical Examination 2002 and thereafter in 2003 and also appeared in 2004 and in all the three years, doctors working on adhoc urgent temporary basis or on consolidated salary were permitted to participate in the process of selection against in service quota and none of the petitioners raised any objection or protest at any time before participating in the process of selection. The petitioners filed the aforesaid writ petitions only after the result was declared on 28.2.2004 and the counselling was notified on 27.3.2004. In view of this fact, the petitioners are estopped to challenge the criteria of selection introduced by the respondent-state/university. In support of their submissions, learned counsel for the respondents placed reliance on the following

judgments:-

a) Vijay Syal and Another Vs. State of Punjab and Others, Union of India and Another Vs. N. Chandrasekharan and Another,

c) 2001 (1) RLR 577 (para 31)(11),d) G.N. Nayak Vs. Goa University and Others,

34. In response to the submissions made on behalf of the petitioners, learned counsel for the respondents submitted that the government has power to issue instructions without amending the Ordinance 278-E of the Rajasthan University Act. Under Ordinance 278-E Clause (iv(ii)), there was no such fixed reservation provided for inservice candidates and it was referred to in Clause 2(b) of reservation for inservice candidates that as many seats as are required shall be reserved for inservice candidates of the Rajasthan State Medical Service nominated by the State of Rajasthan and thereafter amendment was made under Ordinance 278-E vide resolution No. 2 dated 28.8.1997 and after approval from the Syndicate, notified on 6.12.1998, whereby 5 years service was deleted and it was reduced to 3 years service of rural areas or two years service in hill areas of the state of Rajasthan, which was made essential for participating against inservice quota.

35. Learned counsel for the respondents also referred Schedule R-5-A of 1999 and Schedule R-5-B of 2000. Clause 2 of the instructions clearly stipulates that one must be serving the state i.e. the government of Rajasthan continuously for more than three years of service in rural area or two years in hill area and University of Rajasthan and government has issued instructions from time to time in this regard.

36. The government is always competent to issue instructions and the only impediment is that it should not be inconsistent to the scheme of Regulation or Ordinance 278-E, since the authority vests with the state government for holding selection to Pre. PG. Examination.

37. In the case Rajiv Kapoor and Others Vs. State of Haryana and Others, it has been held by the Supreme Court that the state government is competent to give direction so long it is not inconsistent with the provisions of the Act or the Rules made there under and undisputably the grant of eligibility to medical officer working on urgent temporary or on consolidated salary is nowhere inconsistent with the existing ordinance 278-E of the University of Rajasthan Ordinance. Thus the action of the state government is in consonance with the scheme of Rules and no error has been committed in taking such decision by the authority.

38. Learned counsel for the respondents further submitted that as per the University of Rajasthan Act 1946, the University is only empowered to hold examination and to confer degrees and other academic distinctions and so far as holding of examination and laying down the conditions with regard to source of admission is not the power of the University available in terms of Section 4 of the Act of 1946 and Section 4 of the Act of 1946, if read with Section 3 read with

Section 22 of the UGC Act, 1956, the power has been delegated to the University of Rajasthan to confer degrees. In support of their submissions, they placed reliance on the cases *Dr. Kavita Jain v. University of Rajasthan and Ors.*, SAW No. 1282/97, and in the case *K. Duraisamy and Another Vs. The State of Tamil Nadu and Others*, wherein it has been held that it is the government who is competent to lay down the instructions and guidelines for admission to the Pre. P.G. Courses.

39. By referring the case of *Preti Srivastava* 1997(7) SCC 120, wherein Medical Council of India has laid down its post graduate Medical Education Regulations, 2000, which has been notified on 7.10.2000 issued in exercise of powers conferred u/s 33 read with Section 20 of the Indian Medical Council Act, 1956 and Ordinance 278-E after enforcement of Regulations of 2000, does not have any legal sanctity since no State or University or any other body to whom the powers has been delegated by the State is at all made competent to make any provision inconsistent to the provisions of Regulation, 2000, Thus, Ordinance 278-E, whenever there is inconsistency, the scheme of Regulations 2000 will hold the field since the same has been created under the Central Act i.e. Indian Medical Council Act, 1956.

40. Learned counsel appearing on behalf of the respondents further submitted that there is no distinction so far as the nature of service is concerned, which is being discharged by the medical officers appointed under the Rules of 1963 and if the Government took decision to pay salary on consolidated basis, that cannot be a ground to eliminate them from holding eligibility for inservice quota. Thus all the medical officers irrespective of their nature of appointment, their service conditions are regulated by common standard, they are working under the control of Director Medical and Health Services and if any misconduct is committed by the medical officer, he can be charge-sheeted under the disciplinary rules of 1958 and the duty discharged by such medical officers are similar to the duty discharged by the regularly selected medical officers through RPSC.

41. It is also given out by the learned counsel for the respondents that last regular selections were held by the RPSC in 1999 and thereafter fresh process has been initiated by the present advertisement No. 5/03-04 and the last date of application in the present advertisement was 10.3.2004 and all the medical officers, who are working on urgent temporary basis or on consolidated salary have submitted their applications. Thus, when no selection process has been initiated in the intervening period, they were deprived from availing the opportunity to undergo the process of regular selection and it was one of the consideration for which this conditions of regular selection was deleted by the amendment in Ordinance 278-E.

42. Learned Additional Advocate General Mr. Mohd. Rafiq also filed an additional affidavit as per direction of this court and in the additional affidavit it is submitted that on re- examination of the entire matter, the government" has since decided to keep the order dated 26.5.2004 in abeyance vide order issued

by the Director dated 29.5.2004 with the further direction that the statute of the Medical Officers working on ad-hoc/temporary/contract basis shall not be changed in the light of the order passed by this Court on 24.5.2004 permitting them to appear for recounselling.

43. Much emphasis has been given on the role of the state as it was submitted by the respondents that the state is only empowered to issue instructions regarding fixing eligibility criteria. In support of their submissions that the University is only the agency to conduct examination and confer degree placed reliance on the judgments *The State of Madhya Pradesh and Others Vs. Gopal D. Tirthani and Others*, and also referred the judgment *Harish Verma and Others Vs. Ajay Srivastava and Another*, to support their submissions that only selected candidate through RPSC alone cannot be treated in-service candidate.

44. It is also given out at Bar that validity of Section 278 (E) is upheld by this court in the case RLW 1993 60 (20), and 1995 (1) WLC 90 (23), and so far principle of estoppel is concerned, the respondents placed reliance on the judgment *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others*, and 2003 (1) RLR 588 para 14 (22), and AIR 1958 SC 589 (23).

45. Having heard rival submissions of the respective parties, after perusal of the material available on the record as well as the provisions referred before me and also after carefully examining the judgments referred before me by the respective parties, it is not disputed that the petitioners who are working as medical officer have applied for admission in Post-Graduate studies in Medical Science in pursuance of the Notification issued by University of Rajasthan for conducting Pre P.G. Medical Examination 2004.

46. The Medical council of India provides standard of education for guidance of Universities. Relevant portion of Section 11, 15 and 20 of the Medical Council Act, 1956 read as under:-

11. Recognition of medical qualifications granted by Universities or medical institutions in India:-

to post-graduate medical examination-

1) The medical qualifications granted by any University or medical " institution in India which are included in the first Schedule shall be recognised medical qualifications for the purposes of this Act.

2) Any University or medical institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Government to have such qualification recognised, and the Central Government, after consulting the Council, may, by notification in the Official Gazette, amend the first Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the first Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date.

15. Right of persons possessing qualification in the Schedules to be enrolled:-

1) subject to the other provisions contained in this Act, the medical qualification included in the Schedules shall be sufficient qualification for enrollments on State Medical Register.

20. Post-graduate Medical Education Committee for assisting Council in matters relating to post-graduate medical examination-

1) The Council may prescribe standards of post-graduate medical education for the guidance of universities, and may advise universities in the matter of securing uniform standards for post-graduate medical education throughout India, and for this purpose the Central Government may constitute from among the members of the Council a Post Graduate Medical Education Committee.

47. The Medical Council of India framed Post-graduate Medical Regulations, 2000. u/s 20 the regulations are framed for guidance of Universities. Section 33 empowers Council to frame regulations to carry out purposes of the Act. Section 33(J) give emphasis on role of the universities. Thus, the regulations of 2000 occupy the field but only to the extent provided under the Regulations.

48. Regulation 9 relate to selection of P.G. students and as per regulation 9(2) and 9(2) (i), in the matter of admission precedence has been given to the universities.

49. Section 29, 30 and 31 of the Rajasthan University Act, 1946 which are relevant to resolve the present controversy, are reproduced hereunder:-

29. Subject to such conditions as may be prescribed by or under the provisions of this act, the Syndicate may make Ordinances, consistent with this Act and the Statutes, to provide for all or any of the following matters-

2. conditions under which students shall be admitted to courses of study and curricula and examinations for degrees, diplomas and other academic distinctions.

30. 1. Save as otherwise provided in this Section, Ordinances shall be made by the Syndicate, provided that no Ordinance concerning admission to the University or to its examinations, courses of study, scheme of examination, attendance, and appointment of examiners shall be considered unless a draft of such Ordinance has been proposed by the Academic Council.

2. The Syndicate shall not have power to amend any draft proposed by the Academic Council under the provisions of Sub-section (1), but may reject it or return it to the academic council for reconsideration either in whole or in part, together with any amendments which the Syndicate may suggest.

3. All Ordinances made by the Syndicate shall be submitted to the senate, and shall be considered by the Senate at its next meeting. The senate shall have power, by a resolution passed by a majority of not less than two-thirds of the members voting, to cancel any Ordinance made by the Syndicate and such

Ordinance shall from the date of such resolution be void.

31. Admission of students to a college shall be subject to the conditions prescribed by the ordinances/Rules in this behalf.

50. It is not disputed that all the Medical Colleges in Rajasthan are affiliated with the University of Rajasthan and are governed by the Ordinances and Statutes of the University. As per the provisions of Section 23 of the Act of 1946 an Academic council has been provided and u/s 23-A functions of the Academic Council has been stipulated. The standard of teaching and examination are within the purview of University and in Ordinance the Syndicate is only empowered to make amendment u/s 22 of the Act of 1946 which is reproduced hereunder;-

22. Subject to such conditions as may be prescribed by or under the provisions of this Act, the Syndicate shall exercise the following powers and perform the following functions,

- a) to make, amend and cancel Ordinances;
- b) to hold, control and administer property and funds of the university;
- c) to accept, on behalf of the university, donations, bequests, or transfers of movable or immovable property;
- e) to invest moneys belonging to the university;
- f) to enter into, vary, carry out, confirm and cancel contracts on behalf of the University;
- ff) on the security of the property of the University or on any other security and subject to the prior concurrence of the state government, to borrow money or raise public loans for the purpose of the university;
- g) subject to the provisions of this Act and the Statutes, to appoint officers other than Chancellor, vice-Chancellor and Deans of Faculties), teachers, and to define their duties, emoluments and Conditions of service;
- h) to determine the form, provide for the custody and regulate the use of the common seal of the university;
- i) Subject to the Statutes to inspect and to affiliate, recognise or approve colleges and hostels or institutions, and to withdraw affiliation, recognition or approval from them;
- j) to arrange for the holding of examinations and publishing results thereof;
- k) to maintain proper standards of teaching and examination in consultation with the Academic Council; and
- l) to recommend minimum scales of salaries of teachers in colleges.

51. Thus, there are three agencies: One is Medical Council to laid down standard

and another is University of Rajasthan for conducting the examination and confer the degree and third is the Rajasthan state to issue instructions regarding eligibility criteria as the power conferred upon the state by virtue of entry 25 of the concurrent list of 7th Schedule of the Constitution of India and the State of Rajasthan have vested powers with regard to the admission, examination and other related matters of medical education to the university of Rajasthan in so far as P.G. degree in medical science in Rajasthan is concerned.

52. It is not disputed that the state government cannot issue any instruction contrary to regulations. The administrative instructions can supplement the rules and regulations but cannot completely supplant or alter as held by the Supreme Court in the case "Sant Ram v. State of Rajasthan", 1967 Supreme Court 1910.

53. It is also not disputed that for making amendment in the Ordinance or statute, the procedure prescribed in Statute must be complied with.

54. By perusal of the instructions issued by the state it appears that they are not contrary to the provisions of Ordinance 278-E and 278-G of the University. Ordinance 278-E is reproduced here under: -

278-E (b) Reservation for in-service candidates:

"As many seats as are required shall be reserved for in- service candidates of the Rajasthan State Medical Services nominated by the Government of Rajasthan."

But thereafter amendment was made and for in-service candidates following provisions was made:-

"For seats reserved for inservice candidates as referred to in Clause (ii)(c) the candidates must have served the State i.e. Government of Rajasthan continuously for more than 5 years after regular appointment under Rajasthan Medical and Health Service Rules, 1963 and should be below the age of 45 years and should have completed at least 3 years of service in the rural areas of the State of Rajasthan.

55. The word "regular" which was earlier in Clause (iv) (ii) has been deleted and upon perusal of instructions for the Pre P.G. Medical Examination 2004 for admission to MD/MS/Diploma Courses wherein it is clearly stipulated that the candidates should have worked in the rural area continuously for three years in adhoc/temporary capacity or on consolidated salary and they will also be eligible for in service category, the medical officers who are working on the consolidated salary also declared eligible to appear in the category of in-service for pre P.G. Medical Examination.

56. I have also perused the relevant provisions in this regard. It is the domain of the state to laid down eligibility criteria for appearing in the Pre P.G. Medical Examination and the state of Rajasthan thought it proper to include the doctors who are working on contractual basis as eligible for pre P.G. Medical Examination 2004 in the in-service category.

57. It is also not disputed that since last three years this criteria has been followed and the persons who are working on contract basis are being considered eligible to appear in the Pre P.G. Medical Examination. The only change which has been made by the state and the university is with regard to the period of service rendered in the rural or hilly area which was earlier five years and now reduced to three years.

58. It is also not disputed that since 1999 no regular selection has been made by the R.P.S.C. on the post of Medical Officer and it appears that to give incentive to those doctors who are serving in the rural and hilly area this criteria has been laid down.

59. I have also perused the judgments referred by the respondents wherein this High Court and Hon"ble Supreme Court have held that the state is empowered to issue instructions and only impediment is that such instructions should not be in contravention of the provisions. Here in the instant case the instructions which are issued, I do not think that it is in contravention to the provisions of Section 278 E and 278 G.

60. So far the duty discharged by the regularly selected candidates through RPSC and who are appointed on contract basis are similar in nature and the eligibility criteria is also similar in nature. The only difference is that the doctors who are working on contract basis before joining the superspeciality have to submit their resignation whereas duly selected doctors through RPSC need not to resign and they are entitled to get the salary also as per the provision of law whereas on contract basis they are not entitled to get the salary.

61. Thus, it appears that the state with a view to give incentive to those doctors who are rendering their services in the rural and hill they are included in the in-service category which cannot be said to be contrary to the provisions of law and this practice in continuously in operation since last three years and the petitioners at this stage after participating in the examination and after declaration of the result cannot challenge the validity of eligibility criteria as they are estopped to challenge the same.

62. I have also perused the instructions issued by the state from time to time for the last three years. It appears that the state every year issuing instructions which are only effective for one year this creates confusion to those doctors who are willing to appear for Pre PG Medical Examination in the category of in-service. In my considered opinion, the state should be firm in their decision and should be clear while exercising discretion and in view of the instructions the appropriate amendment should be made by the University well in time so that in future the medical officers should not suffer and should not indulge in the litigations since the state itself is not firm in their decision and every year they are changing the instructions by way of changing criteria of eligibility. This leads to uncertainty. The state government is expected to undertake the exercise and laid down the criteria and in accordance with the criteria, the university be

directed to amend the Ordinance accordingly but in any case for the present controversy as the state is empowered are issued from time to time, I find the instructions are not contrary to the provisions of 278. But I deprecate the practice of the state government not to laid down the firm criteria one's for ever to remove all doubts.

63. Accordingly, I do not want to interfere in the instructions issued for the Pre P.G. Medical Examination 2004 for admission to MD/MS/Diploma Courses.

64. Upon perusal of the relevant provisions of University Ordinance and University Act as well as the Medical Council Act I find no illegality if the doctors who are working on adhoc/contract/consolidated pay are allowed to appear in the Pre P/G. Examination 2004 for admission to MD/MS/Diploma Courses in the inservice category. However, as discussed herein above, it is expected from the state government to laid down firm policy for ever and instruct the university to carry out the necessary amendment in the ordinance so that every year the doctors who are appearing in the examinations may not waste their valuable time by indulging in unwarranted litigations.

65. Therefore, in view of the aforesaid discussions and observations, the writ petition fails and is hereby dismissed with no orders as to costs.